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8 UNITED STATES DISTRICT COURT
9 WESTERN DISTRICT OF WASHINGTON
10 AT TACOMA

11 BRIAN D. MATTHEWS,

12 Plaintiff,

13 v.

14 JOSEPH LEHMAN, *et al.*,

15 Defendants.

Case No. C07-5376RJB

REPORT AND
RECOMMENDATION

Noted for September 26, 2008

16 This case has been referred to Magistrate Judge J. Kelley Arnold pursuant to 28 U.S.C. §
17 636(b)(1)(B) and Local MJR 4. This matter comes before the court on the plaintiff's motion for default
18 (Doc. 86). After reviewing the relevant pleadings and the remaining record, the undersigned submits the
19 following report and recommendation.

20 DISCUSSION

21 The Federal Rules of Civil Procedure require defendants to answer a complaint within twenty (20)
22 days from the date being served with the summons and complaint, or if service of the summons was
23 timely waived, within sixty (60) days after the date when the request for waiver was sent. Fed. R. Civ. P.
24 12(a). If a defendant fails to respond within that time, a default judgment may be entered. Benny v.
25 Pipes, 799 F.2d 489, 492 (9th Cir. 1986), *cert. denied*, 108 S.Ct. 198 (1987).

26 In this case, plaintiff argues Defendant Alvarado was properly served with summonses and copies
27 of the Complaint on December 31, 2007, but has not filed an answer to the First Amended Complaint
28 (which was filed on or about March 18, 2008). Defendants had appeared in the case, but had not filed an

1 answer. After resolution of a motion to dismiss, Defendants filed an Answer to the Amended Complaint,
2 but failed to include Defendant Alvarado. On August 25, 2008, plaintiff filed the instant motion for
3 default against Defendant Alvarado. Significantly, on August 28, 2008, the court received Defendant
4 Alvarado's answer to the Amended Complaint along with Defendants' response to the motion to default.
5 Defendants argue default should not be granted due to an inadvertent mistake.

6 CONCLUSION

7 Because defendants have answered plaintiff's amended complaint the undersigned recommends
8 that the Court DENY plaintiff's motion for default. Default judgments are generally disfavored and the
9 court prefers a decision on the merits, In re Hammer, 940 F.2d 524, 525 (9th Cir. 1991).

10 Pursuant to 28 U.S.C. § 636(b)(1) and Rule 72(b) of the Federal Rules of Civil Procedure, the
11 parties shall have ten (10) days from service of this Report to file written objections. *See also*
12 Fed.R.Civ.P. 6. Failure to file objections will result in a waiver of those objections for purposes of
13 appeal. Thomas v. Arn, 474 U.S. 140 (1985). Accommodating the time limit imposed by Rule 72(b), the
14 clerk is directed to set the matter for consideration on **September 26, 2008**, as noted in the caption.

15 DATED this Tuesday, September 2, 2008.

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17 /s/ J. Kelley Arnold
18 J. Kelley Arnold
19 United States Magistrate Judge
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